

Case3:11-cv-02910-EMC Document22 Filed08/25/11 Page1 of 6

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

SAN FRANCISCO DIVISION

SKYE ASTIANA on behalf of herself and all others similarly situated. | CASE NO.: 3:11-cv-02910-EMC

Plaintiff,

v.

DREYER'S GRAND ICE CREAM, INC.,

Defendant.

PAMELA RUTLEDGE-MUHS and JAY WOOLWINE, on behalf of themselves and all others similarly situated,

CASE NO.: 4:11-cv-03164-EMC

Plaintiffs.

v.

DREYER'S GRAND ICE CREAM, INC.

Defendants.

~~PROPOSED~~ PRETRIAL ORDER NO. 1

WHEREAS, Plaintiffs in the above-referenced actions allege violations of California law under California's Unfair Competition Law, Bus. & Prof. Code. §§ 17200, *et seq.*, California's False Advertising Law, Bus. & Prof. Code §§ 17500, *et seq.*, California's Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*, and for fraud and restitution based on quasi-contract / unjust enrichment theories for Defendant Dreyer's Grand Ice Cream, Inc.'s allegedly unlawful labeling of its products as "All Natural" despite containing non-natural ingredients; and

WHEREAS, the Court has determined that any substantially similar future actions should be consolidated with the above-captioned actions and that the appointment of interim counsel is appropriate and consistent with Fed.R.Civ.P. 23(g) and the recommendations of the Manual for Complex Litigation (4th ed. 2004);

NOW THEREFORE, the Court Orders as follows:

I. CONSOLIDATION OF RELATED ACTIONS

Astiana v. Dreyer's Grand Ice Cream, Inc., Case No. 3:11-cv-02910-EMC and *Rutledge-Muhs, et al. v. Dreyer's Grand Ice Cream, Inc.*, Case No. 4:11-cv-03164-EMC and any action arising out of the same operative facts against Defendant that is filed and pending in this Court, or hereafter filed or transferred to this Court (collectively "The Actions"), are hereby consolidated pursuant to Fed.R.Civ.P. 14.

42(a) for ~~all~~^{pretrial} purposes. Each case shall remain distinct and maintain its own identity and case number pending determination of class certification and unless otherwise ordered by the Court. However, the operative complaint for The Actions consolidated hereunder is the complaint (or any amended complaint) filed in *Astiana v. Dreyer's Grand Ice Cream, Inc.*, Case No. 3:11-cv-02910-EMC. Defendant shall not have an obligation to respond to any complaint in any other of The Actions consolidated hereunder unless otherwise ordered by the Court. Notwithstanding the designation of the *Astiana* complaint as the operative pleading, Pamela Rutledge-Muhs and Jay Woolwine shall also be considered operative plaintiffs and eligible to be appointed as class representatives.

II. NEWLY FILED ACTIONS

A. When a case which relates to any claim or cause of action which is embraced within the scope of the pleadings in The Actions is filed in this Court against Defendant, Plaintiffs' Interim Co-Lead Counsel shall:

1. File a copy of this Order in the separate file for such action;
 2. Notify counsel for Defendant of the filing of such action;
 3. Mail a copy of this Order to counsel for the Plaintiff(s) in the newly filed case; and
 4. Upon the first appearance of any new defendant(s), mail a copy of this Order to counsel for the defendant(s) in the newly filed case.

B. Each case which relates to any claim or cause of action that is embraced within the scope of The Actions which is subsequently filed in this Court against Defendant shall be consolidated and Pretrial Order No. 1 shall apply thereto unless a party objecting to the consolidation of such case or to any provision of this Order shall, within twenty (20) days after the date upon which a copy of this

1 Order is mailed to counsel for such party, file an application for relief from this Order or any provisions
2 herein.

3 C. The Court requests the assistance of counsel in calling to the attention of the Clerk of
4 this Court the filing of any case that might properly be consolidated with The Actions.

5 **III. SERVICE OF PLEADINGS AND OTHER PAPERS**

6 Except when otherwise agreed, Defendant's counsel shall serve all Plaintiffs' counsel listed on
7 Exhibit A hereto, and any Plaintiff's counsel shall serve all of Defendant's counsel with pleadings,
8 motions, memoranda, briefs, oppositions and other papers filed in any of The Actions consolidated
9 hereunder.

10 **IV. PRELIMINARY ORGANIZATION OF PLAINTIFFS' COUNSEL**

11 A. Prior to any determination of class certification and to facilitate the orderly coordination
12 and progress of The Actions, prosecution of this litigation on behalf of any putative Class or Classes in
13 The Actions and all other related actions pending or hereafter filed in or transferred to this County shall
14 be managed and directed by Plaintiffs' Interim Co-Lead Counsel, who shall be:

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6 B. Plaintiffs' Interim Co-Lead Counsel are vested by the Court with the following
7 responsibilities and duties relating to The Actions and all other related actions pending or hereafter filed
8 in or transferred to this Court, in order to prevent duplication of effort or duplicative pleadings on behalf
9 of Plaintiffs and the class:

- 10 1. To brief and argue motions, including any motion to certify a proposed Class;
- 11 2. to initiate and conduct written discovery proceedings;
- 12 3. to examine witnesses in depositions;
- 13 4. to act as a spokesperson at pretrial conferences;
- 14 5. to call meetings of Plaintiffs' counsel as they deem necessary and appropriate
from time to time;
- 15 6. to conduct all settlement negotiations with counsel for Defendant;
- 16 7. to provide general coordination of activities of Plaintiffs' counsel and to delegate
work responsibilities to selected counsel as may be required;
- 17 8. to coordinate and direct the preparation and trial of this matter and to delegate
work responsibilities to selected counsel as may be required; and
- 18 9. to coordinate this matter with any other related litigation not otherwise referred
to herein.

23 C. No pleadings or other papers shall be filed or discovery conducted on behalf of the
24 alleged Class(es) or any individual action consolidated hereunder without the advance approval of
25 Plaintiffs' Interim Co-Lead Counsel so that there will be no duplicative pleadings or discovery by
26 Plaintiffs.

1 D. Plaintiffs' Co-Lead Counsel shall make any work assignments in such a manner as to
2 conduct an orderly and efficient prosecution of this litigation and to avoid duplicative or unproductive
3 work.

4 E. All Plaintiffs' counsel shall submit to Plaintiffs' Interim Co-Lead Counsel a record of
5 time expended and expenses incurred in the manner, form and frequency directed by Plaintiffs' Co-Lead
6 Counsel. *The Court expects counsel to minimize duplication and exercise billing judgment.*

7 F. Counsel in any related action that is coordinated with The Actions shall be bound by this
8 Order and organizational structure of the Plaintiffs' counsel.

9 G. This appointment of Interim Co-Lead Counsel is interim. A final determination on the
10 appropriateness of appointing class counsel will be made, as appropriate and if necessary, in connection
11 with proceedings relating to the determination of class certification.

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13 **IT IS SO ORDERED.**

14 DATED: 9/30/11

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16 The Honorable Edward M. Chen
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18 United States District Court Judge

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EXHIBIT A

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